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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,218	06/05/2001	Joseph H. Contiliano	ETH1536	5741
27777	7590	04/20/2004	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			MATTHEWS, WILLIAM H	
			ART UNIT	PAPER NUMBER
			3738	13

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,218

Applicant(s)

CONTILIANO ET AL.

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6.9.12.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2-4-04 have been fully considered but they are not persuasive.
2. With regard to Gresser et al. Applicant contends Gresser et al. lacks a tissue scaffold implant comprising a foam tissue scaffold component and a fixation component partially encapsulated by the foam tissue scaffold component. Examiner disagrees because paragraph [0027] describes a foam tissue scaffold component encapsulating a fixation component (any of examples shown in figures 2-5).
3. With regard to Melican Applicant contends Melican lacks a fixation component comprising both a tissue scaffold support means and anchor means. Examiner disagrees because the fixation component 16 supports the foam scaffold component 12 and comprises anchor means such as suture or staples.
4. Arguments with respect to Sherwood are now moot.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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2. Claims 1-5,7-11,13, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Gresser et al. US 2001/0008980.

Gresser et al. discloses in Figures 4a-4b and paragraphs 8-10,33,38,47, and 71 a resorbable tissue scaffold implant comprising a foam tissue scaffold component (main body of Fig 4a) and a partially encapsulated fixation component comprising threads 41 serving as anchors. Pores or through holes (43-46) fulfill the open-cell pore structure. Hydroxyapatite is described in paragraph 47 as a reinforcement component.

3. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Melican et al. US 2002/0120348.

Melican et al. discloses in Figures 1-5 and paragraphs 10-12,22-31,36,41-42,46-51, and 59-63 multiple embodiments of a resorbable tissue scaffold implant comprising a open cell porous foam tissue scaffold component 12, a partially encapsulated fixation component, and reinforcement components. Reinforcement may be accomplished by reinforcement mesh(s) 14, reinforcement solids in the foam (paragraphs 46-51), and/or by a fibrous layer (paragraphs 59-63). The fixation component as claimed, may be the fibrous layer and/or reinforcement mesh(s) 14. The fibrous layer may include anchors such as non-absorbable staples.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

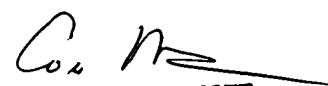
Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Mon-Fri 7:00-4:30 (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



WHM
April 19, 2004



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700